

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
NPCR, Inc d/b/a/ Nextel Partners	)	DA 03-1929
	)	
Petition for Designation as an	)	
Eligible Telecommunications Carrier	)	
In the Commonwealth of Pennsylvania	)	

**REPLY COMMENTS  
of the  
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT  
OF SMALL TELECOMMUNICATIONS COMPANIES**

**I. INTRODUCTION**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in response to the proceeding on the NPCR, Inc. d/b/a/ Nextel Partners (Nextel) petition for designation as an eligible telecommunications carrier (ETC) for the Commonwealth of Pennsylvania.<sup>1</sup> OPASTCO is a national trade association representing approximately 500 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All of OPASTCO's members are rural telephone companies

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<sup>1</sup>*Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a/ Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania*, CC Docket No. 96-45, Public Notice, DA 03-1929 (rel. June 12, 2003).

as defined in 47 U.S.C. §153(37). In addition, they are all ETCs in their respective service areas.

Nextel's application for ETC designation in the Commonwealth of Pennsylvania should be denied unless and until a more complete public interest showing, taking into account both the public benefits and the public costs of granting ETC status to Nextel, can be made. Alternatively, Nextel's application should be stayed pending the resolution of the current proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs.

## **II. COMMENTS**

The applications of Nextel in Pennsylvania and other states,<sup>2</sup> as well as similar requests made by ALLTEL Communications,<sup>3</sup> mark a significant change in the type of commercial mobile radio service (CMRS) providers that are applying for ETC designation. Prior applications that have come before the Commission have involved primarily smaller regional CMRS providers.<sup>4</sup> Nextel and ALLTEL are the first CMRS providers with national networks to file ETC applications with the Commission. The manner in which the Commission addresses these applications will therefore have a significant impact on the future funding demands of the High-Cost program.

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<sup>2</sup> To the best of OPASTCO's knowledge Nextel has applied for ETC status in New York, Pennsylvania, Virginia, and Arkansas.

<sup>3</sup> To the best of OPASTCO's knowledge ALLTEL has applied for ETC status in Alabama, Michigan, and Virginia.

<sup>4</sup> Other regional carriers that have applied to the FCC for ETC status in areas served by rural telephone companies include RCC Cellular, Cellular South, and Western Wireless Corporation. Numerous others have applied for and received ETC designations from their respective state public utilities commissions.

If the Commission grants Nextel's application for Pennsylvania and other similar applications that are currently pending, it will only serve to encourage additional CMRS providers, including other large national carriers, to apply as well. This is because once one CMRS provider obtains ETC status in a rural area, the other CMRS providers in the area will be compelled to seek ETC designation as well in order to remain competitive.<sup>5</sup> In addition, should it become apparent that funding is readily available to CMRS providers merely for the asking, carriers may be violating their fiduciary obligation to their shareholders if they chose not to apply.

Such a large-scale increase in ETC designation requests will surely hasten the rapid escalation of the size of the Universal Service Fund (USF) as predicted by OPASTCO and other parties.<sup>6</sup> In its recent white paper *Universal Service in Rural America: A Congressional Mandate at Risk*, OPASTCO estimated that if all CMRS providers nationwide were to apply for and receive ETC status, the annual funding level of the High-Cost program would increase by approximately \$2 billion.<sup>7</sup> This would seriously threaten the continued ability of the High-Cost program to ensure the provision of affordable and "reasonably comparable" services and rates to consumers in the most remote regions of the nation.

On February 7, 2003, the Federal-State Joint Board on Universal Service (Joint

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<sup>5</sup> This is already occurring. For example, throughout Iowa many rural telephone company study areas have two, and in some cases even three mobile wireless providers that have been designated as ETCs. *See*, Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2003* (Jan. 31, 2003), Appendix HC07.

<sup>6</sup> *See*, OPASTCO Comments in CC Docket No. 96-45 (filed May 5, 2003), pp. 10-11 (OPASTCO Portability Comments). *See also*, National Association of State Utility Consumer Advocates (NASUCA) Comments in CC Docket No. 96-45 (filed May 5, 2003), p. 3 (NASUCA Portability Comments).

<sup>7</sup> Stuart Polikoff, *Universal Service in Rural America: A Congressional Mandate at Risk*, OPASTCO, (January 2003), p. 21.

Board) issued a Public Notice which sought comment on numerous competitive universal service issues, including the process for designating ETCs and the methodology for calculating support in competitive study areas.<sup>8</sup> Comments and reply comments have been filed in this proceeding, and the Joint Board will be conducting a hearing on these issues on July 31, 2003. It is quite possible that, as a result of this proceeding, there will be significant changes in the way in which competitive ETCs are designated, and in the level of support that they receive.

In their comments on ALLTEL's recent ETC Petitions for the states of Alabama and Virginia,<sup>9</sup> Verizon recommends that until the issues being considered in the Joint Board Portability Public Notice are resolved, the Commission should stay the approval of additional ETC applications.<sup>10</sup> OPASTCO believes that the public interest would best be served by preventing the USF from growing out of control at the same time that key policies related to universal service support levels and ETC designations are currently under review. Moreover, until these issues are resolved, it remains unclear how the Commission should evaluate whether or not the designation of an additional ETC would serve the public interest in any given rural service area. Thus, a stay on the review of

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<sup>8</sup> *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 1941 (2003) (Joint Board Portability Public Notice).

<sup>9</sup> See, *Wireline Competition Bureau Seeks Comment on ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45, Public Notice, DA 03-1882 (rel. June 3, 2003) and *Wireline Competition Bureau Seeks Comment on ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia*, CC Docket No. 96-45, Public Notice, DA 03-1881 (rel. June 3, 2003).

<sup>10</sup> See, Verizon Comments in CC Docket No. 96-45 (filed June 30, 2003), pp. 1, 8. This proposal is similar to one made by the National Telecommunications Cooperative Association (NTCA) in their reply comments to the Joint Board Portability Public Notice. See, NTCA Reply Comments in CC Docket No. 96-45 (filed June 3, 2003), pp. 22-23.

pending ETC applications as proposed by Verizon and others would be one possible way in which this problem could be addressed.

While these comments are not intended to debate the many nuances of considering the public interest when evaluating an ETC application, OPASTCO wishes to briefly comment on the manner in which Nextel justifies its application as being in the public interest. Section 214(e)(2) of the Telecommunications Act of 1996 requires that prior to designating an additional ETC in an area served by a rural telephone company, the Commission must find that such designation would be in the public interest. Within its application, Nextel argues that this criteria is met because:

[d]esignation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by ...provid[ing] a valuable alternative to the existing telecommunications regime in these areas. In addition, designation ... will provide an incentive to the incumbent LECs in the Designated Areas to improve their existing networks in order to remain competitive, resulting in improved services to consumers.<sup>11</sup>

Thus, Nextel's application is based entirely on vague generalities regarding the generic benefits of competition. There is no evidence that Nextel would serve any new areas beyond those that it currently serves,<sup>12</sup> nor that Nextel would broaden its service offerings or reduce its prices if it were granted ETC status. There is also no indication

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<sup>11</sup> See, *Petition of NPCR, Inc. d/b/a/ Nextel Partners for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania* (filed April 3, 2003), pp. 6-7.

<sup>12</sup> The Commonwealth Telephone Company (CTC) states that Nextel does not even currently "provide supported services throughout the Designated Areas in the Commonwealth of Pennsylvania," as Nextel claims. CTC points out that the service area map Nextel has provided with its ETC application shows that, "vast areas of the CTC study area are not served by Nextel." CTC Comments, p. 3. The Pennsylvania Telephone Association (PTA) concurs by indicating that "it appears that Nextel's coverage for Pennsylvania's rural areas is limited to narrow bands along interstate and major highways." PTA Comments, pp. 5-7.

that approval of ETC status for Nextel would materially increase the level of competition in the marketplace or hasten the delivery of advanced services.<sup>13</sup>

Furthermore, there is no discussion in Nextel's application of the public costs that would be incurred by providing high-cost support to Nextel for its existing customer base. In comments on the Joint Board Portability Public Notice, OPASTCO and other parties explained that a meaningful public interest analysis must address both the benefits and costs of designating an additional ETC in a rural service area, and that such a designation should occur only when the public benefits from supporting multiple providers exceed the public costs created by supporting multiple networks.<sup>14</sup> Therefore, if the Commission decides not to stay all pending ETC applications, as suggested by Verizon and others, then the Commission should deny Nextel's application unless and until Nextel can make a meaningful demonstration that its designation as an ETC would serve the public interest.

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<sup>13</sup> PTA correctly notes that Nextel's assertion that its presence as an ETC would force incumbent LECs to "improve their networks" is invalid. This is because "if the USF reaches a point where it can no longer grow, but the number of companies that receive support from the USF continues to increase, rural LECs may not have the funding necessary to properly invest in their networks." PTA Comments, p. 9.

<sup>14</sup> OPASTCO Portability Comments, pp. 40-44. *See also*, for example, NASUCA Portability Comments, pp. 8-11; CenturyTel Portability Comments, pp. 16-31; TCA Portability Comments, pp. 3-6; USTA Portability Comments, pp. 8-15; ICORE Portability Comments, pp. 10-16.

### **III. CONCLUSION**

For the foregoing reasons, the Commission should deny Nextel's application for ETC designation in Pennsylvania unless and until a more complete public interest showing is made which takes into consideration both the public benefits and the public costs of granting Nextel ETC status. Alternatively, Nextel's application should be stayed pending the resolution of the current proceeding that is considering changes to the calculation of high-cost support for competitive ETCs and the development of policy guidelines for the review of ETC applications.

Respectfully submitted,

**THE ORGANIZATION FOR THE  
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July 14, 2003

## **CERTIFICATE OF SERVICE**

I, Jeffrey W. Smith, hereby certify that a copy of the reply comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 14<sup>th</sup> day of July, 2003, to those listed on the attached list.

By: /s/ Jeffrey W. Smith  
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**DA 03-1929**

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